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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)

PR Docket No. 93-144

and

Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)
800 MHz SMR)

PP Docket No. 93-253 ✓

To: The Commission

**EX PARTE FILING
OF
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

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Date: September 29, 1995

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SUMMARY

The Personal Communications Industry Association ("PCIA"), through its counsel, hereby respectfully files this Ex Parte communication in response to the invitation of the Federal Communications Commission in the above-captioned proceeding.

In this document, PCIA provides comments, recommendations and suggestions on the Commission's proposed rules. However, such discussion should not be taken to imply that PCIA supports the Commission's intention to auction this spectrum. As PCIA has stated to the Commission in numerous filings and ex parte meetings, PCIA does not believe that the Commission has the authority to auction this spectrum. Further, PCIA has repeatedly stated its opposition to mandatory relocation. PCIA provides these comments to the Commission in an effort to reach an agreement on new rules which protect incumbent licensees to the maximum extent possible while providing geographic licensees with the maximum benefit from their licenses. However, PCIA's Comments are being filed with the express understanding that PCIA reserves its rights to continue to oppose auctioning 800 MHz spectrum in any regulatory or judicial forum.

With the reservations expressed above, PCIA supports BEA Service Area licensing for the upper 200 Channels, with bidders being permitted to bid on and hold licenses for all 200 channels in any given BEA. PCIA believes that the Commission should specify channel blocks of 60, 60, 60 and 20. In addition, transmitter-based SMR licensees who are not relocated should continue to be

permitted to modify their facilities consistent with Section 90.621(b)(6) (the 12 dBu interference contour at maximum power).

PCIA believes that incumbent SMR licensees should be afforded the opportunity to be granted a geographic license, where the BEA licensee clears sufficient spectrum to permit the incumbent SMR licensee to obtain a geographic license for the upper 200, lower 80, or even the GC channels.

Incumbent licensees fear that they will be relocated to the lower 80 SMR Pool channels or the 150 GC channels, only to be relocated again after the Commission revises the rules for those Pools. This will again create uncertainty for licensees, making business plans impossible and stranding investment and customers. Therefore, PCIA believes that the Commission should specify that incumbent SMR licensees will only be required to move one time, unless otherwise agreed to by the incumbent licensee.

PCIA believes that it is important that in cases where the incumbent SMR licensee's frequencies are auctioned to multiple parties, the incumbent will not be required to move a portion of the system's frequencies. The incumbent licensee may demand that a single, unified relocation plan be presented by the BEA licensees that encompass all of the incumbent's frequencies regardless of whether the geographic area extends over multiple BEAs.

In these Comments, PCIA presents a detailed "Incumbent SMR Bill of Rights". PCIA believes that the Bill of Rights must be included in any rule modification adopted by the Commission in this proceeding.

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EX PARTE FILING

The Personal Communications Industry Association ("PCIA"), through its counsel, hereby respectfully files this Ex Parte communication in response to the invitation of the Federal Communications Commission in the above-captioned proceeding.¹

I. BACKGROUND

At a meeting held at the FCC on September 18, 1995, the Wireless Telecommunications Bureau presented to representatives of the SMR industry the Commission's current vision of a Report and Order and Further Notice of Proposed Rule Making in the 800 MHz licensing proceeding. At that time, the Commission invited further industry Comment by September 29, 1995 on the current version of the proposed rules. PCIA's understanding of the Bureau's presentation of proposed rules is summarized below:

¹Public Notice Report No. WT 95-23, DA 95-1965, released September 12, 1995.

I. Channel Assignments and Service Area

- A. The upper 200 SMR Channels (10 MHz) would be subject to wide area licensing;
- B. The licensed Geographic Areas will be Basic Economic Areas ("BEAs");
- C. There will be three (3) channel blocks of 120, 60 and 20 channels each;
- D. There will be no limit on aggregation of channel blocks.

II. Rights & Obligations of Wide Area Licensees

- A. Wide area licensees will receive:
 - 1. "operational flexibility";
 - 2. the right to recover any spectrum that becomes **available in a BEA block (the finder's preference program would be eliminated)**;
 - 3. a presumption in favor of negotiated transfers.
- B. Construction/coverage requirements
 - 1. Geographic licensees must cover 1/3 of the service area in 3 years.
 - 2. Geographic licensees must cover 2/3 of the service area in 5 years.
 - 3. The penalty for failure to satisfy coverage requirements is the loss of the wide area license (but not any constructed facilities).
 - 4. All SMR eligibles will be permitted to partition BEAs.
 - 5. BEA licensees will NOT be required to construct every channel in the authorization over 2/3 of the service area in 5 years. Rather, each individual channel must be constructed only once somewhere within the BEA. The aggregation of constructed channels must cover 2/3 of the service area.

III. Treatment of Incumbent Systems

- A. Incumbent systems would be subject to mandatory relocation.

1. There would be a one year voluntary and two year mandatory relocation period.
 2. The FCC will delay open licensing of lower 80 SMR channels and 150 General Category (GC) channels to "encourage" relocation.
 3. Any licensee subjected to mandatory relocation will not be required to relocate a second time.
 4. The application "freeze" will be partially lifted for incumbents prior to auction to encourage aggregation.
 5. The Commission intends to use a model similar to that used in the "Emerging Technologies" docket.
 6. The Commission seeks guidance on what are "comparable facilities".
 - a. If there is no spectrum available, no relocation would be required.
 - b. Incumbent operators would be required to receive the same number of channels in any modification.
 - c. Incumbent operators would receive the same service area (40 dBu).
- B. Incumbent rights if relocation is not feasible
1. Incumbents would receive co-channel and adjacent channel protection.
 2. Future expansion would be subject to negotiation with the new BEA licensee.
- C. Incumbents can construct anywhere within existing 40 dBu contours, provided the contour is not extended in any direction
- D. For Incumbents with extended implementation schedules:
1. Incumbents must demonstrate a continued need for an extended implementation schedule.
 2. If a case is successfully demonstrated, incumbent gets two years or the remainder of time on extended schedule -- whichever is less.

- E. The Commission plans to release a Second Further Notice of Proposed Rulemaking ("FNPRM") regarding going forward on lower 80 SMR channels and 150 General Category ("GC") channels. The Commission is considering making the 150 GC channels into an entrepreneurs block for smaller entities.

IV. Licensing of Other 800 MHz Channels

- A. The Commission views the lower 80 SMR channels a potential home for relocated upper 10 MHz licensees
 - 1. Licensing on lower 80 SMR channels will be limited site-by-site licensing during interim period to facilitate upper block relocation -- then convert to wide area licensing.
 - 2. The Second FNPRM to be released will address BEA vs. Basic Trading Area ("BTA") channel blocks and auction rules.
- B. The Commission intends to designate the 150 GC channels for SMR licensing only
 - 1. The Commission claims that the majority of the 150 GC channels are licensed to SMR systems or are part of SMR systems.
 - 2. The Commission proposes to designate all the 150 GC channels exclusively for SMR.
 - a. The Commission would freeze licensing of GC channels and issue the Second FNPRM.
 - b. The Commission is considering relocating non-SMRs to other category channels and grandfathering existing SMR systems.

V. Competitive Bidding Issues

- A. The Commission intends to use simultaneous multi-round bidding for upper 200 SMR channels
- B. The auction methodology for lower 80 channels would be decided by the second FNPRM
- C. The Commission will propose bidding credits for the lower 80 SMR and 150 GC channels, but NOT for the upper 200 SMR channels.

- D. The Commission proposes to designate the lower 80 SMR Pool and 150 GC channels as an entrepreneurs' SMR block; seeks comment in second FNPRM.

In this document, PCIA provides comments, recommendations and suggestions on the Commission's proposed rules. However, such discussion should not be taken to imply that PCIA supports the Commission's intention to auction this spectrum. As PCIA has stated to the Commission in numerous filings and ex parte meetings, PCIA does not believe that the Commission has the authority to auction this spectrum.² Further, PCIA has repeatedly stated its opposition to mandatory relocation. However, the Wireless Telecommunications Bureau has specifically stated that the Commission WILL auction this spectrum, and WILL impose mandatory relocation (although the Commission initially declined to impose mandatory relocation in earlier stages of this proceeding). Therefore, PCIA provides these comments to the Commission in an effort to reach an agreement on new rules which protect incumbent licensees to the maximum extent possible while providing geographic licensees with the maximum benefit from their licenses. However, PCIA's Comments are being filed with the express understanding that PCIA reserves its rights to continue to oppose auctioning 800 MHz spectrum in any regulatory or judicial forum.

II. COMMENTS

PCIA is concerned that the Wireless Telecommunications Bureau intends to decide licensing of the lower 80 SMR and 150 General

²See, for example, ex parte filing of PCIA dated June 6, 1995.

Category channels in another phase of this proceeding.³ 800 MHz licensees MUST be able to know what the rules will be on the remaining spectrum BEFORE any auction or relocation occurs. Without such knowledge, it is impossible for incumbent licensees in all portions of the 800 MHz spectrum to know whether to bid on spectrum, whether to attempt to aggregate spectrum in the lower bands, or whether to accept the consequences of being a "relocatee".

A. 800 MHz Wide Area SMR Service and Auction Rules

With the reservations expressed above, PCIA supports BEA Service Area licensing for the upper 200 Channels, with bidders being permitted to bid on and hold licenses for all 200 channels in any given BEA. Auction winners should be allowed to engage in geographic or spectrum channel partitioning, and should be allowed to aggregate channels or geographic areas.

PCIA believes that the Commission should specify channel blocks of 60, 60, 60 and 20. This will enable additional participation by small entities already in the SMR business. A 120 channel block can only be purchased by the largest of entities, and is unnecessary to accomplish the Commission's goals.

Transmitter-based SMR licensees who are not relocated should continue to be permitted to modify their facilities consistent with

³The Commission should be aware that PCIA has NOT changed its position regarding eligibility for the 150 GC channels. Such channels should retain their open eligibility and should NOT be auctioned as discussed in PCIA's previously filed Comments. Rather, such channels should continue to be made available on a first-come, first-serve basis.

Section 90.621(b)(5) (the 22 dBμ interference contour at maximum power). It is PCIA's understanding that the Commission intends to utilize the 40 dBμ service contour as the criteria. It is PCIA's view that use of the 40 dBμ service contour unnecessarily restricts incumbent licensees' flexibility. Although the additional flexibility will be small, the use of the interference contour will allow SOME additional flexibility to utilize reduction of ERP, directional antennas, lower antennas, etc. to modify their systems.⁴

Since the reason to restrict the movement of incumbent licensees is to prevent interference to BEA licensees, it is most logical to restrict expansion of the interference contour. PCIA believes that the utilization of the interference contour is the most equitable method to protect incumbent licensees.

B. Policies Governing the Retuning of Incumbent SMR Licenses

Under the Bureau's plan, incumbent SMR licensees would be subject to involuntary retuning to other frequencies after a one year voluntary relocation period if afforded full cost compensation and comparable alternate facilities. However, PCIA believes that the Commission should seize upon the opportunity to create a "win-win" situation for both auction winners AND incumbent licensees. In other words, the Commission should be concerned with more than just finding a way to minimize its licensing responsibilities and conduct another auction. The Commission should also be concerned

⁴Per the existing rules, the interference contour of the incumbent systems should be calculated utilizing maximum ERP for the antenna height above average terrain.

with enhancing the competitive opportunities for incumbent licensees who cannot afford to participate in the Commission's auction.

In this light, PCIA believes that incumbent SMR licensees retuned to other channels should be afforded the opportunity to be granted a geographic license, where the BEA licensee clears sufficient spectrum to permit the incumbent SMR licensee to obtain a geographic license for the upper 200, lower 80, or even the GC channels. By providing the opportunity for incumbent licensees to obtain a geographic license, incumbents can find value in agreeing to relocate during the initial "voluntary" period. Similarly, incumbent licensees on the lower 80 SMR Pool channels, the GC channels and the Business/Industrial Pool channels should be able to achieve channel exclusivity on a channel by channel basis if they are able to "clean-up" a channel in the entire BEA.

Incumbent SMR licensees should have at least one year after receipt of a qualifying relocation plan to complete the modification. The parties could also mutually agree to a longer period of time. However, PCIA is concerned that BEA licensees may isolate incumbent licensees for a significant period, making the incumbent licensee unable to make business plans or arrange to make arrangements to network with other independent operators. Therefore, PCIA recommends that the incumbent SMR licensees may also request relocation from the BEA licensee. The BEA licensee must then make such spectrum available to the incumbent SMR licensee within one year. If the BEA licensee is unable to provide

the spectrum for relocation after receiving the request from the incumbent, the incumbent should be considered to have fulfilled its obligation and should not be required to move.

1. **The Bureau's Plan Creates Uncertainty For Incumbents**

Another fear of incumbent licensees is that they will be relocated to the lower 80 SMR Pool channels or the 150 GC channels, only to be relocated again after the Commission revises the rules for those Pools. This will again create uncertainty for licensees, making business plans impossible and stranding investment and customers. Therefore, PCIA believes that the Commission should specify that incumbent SMR licensees will only be required to move one time, unless otherwise agreed to by the incumbent licensee.

Trunked SMR licenses have traditionally been allocated five channels with 1 MHz spacing. Therefore, virtually every SMR licensee in the upper 200 channels has channels in each of the proposed auction blocks. Where the three auction blocks are "purchased" by different applicants, the incumbent licensee may need to deal with multiple auction winners, each with their own idea of whether, and to what extent, the incumbent should be relocated. Again, this has the potential to delay, disrupt and deter business plans by incumbent licensees. PCIA believes that it is important that in cases where the incumbent SMR licensee's frequencies are auctioned to multiple parties, the incumbent will not be required to move a portion of the system's frequencies. The incumbent licensee may demand that a single, unified relocation plan be presented by the BEA licensees that encompass all of the

incumbent's frequencies regardless of whether the geographic area extends over multiple BEAs.

The single, unified relocation plan must extend to cases where incumbent licensees have multiple transmitter site systems. In fact, many incumbent licensees now operate networks consisting of multiple systems at multiple sites. Permitting BEA licensees to relocate portions of a networked system at different times will have a devastating effect on the business and customer base of incumbent licensees.

Discussions between incumbent licensees and BEA auction winners cannot be expected to always be positive. Therefore, it is important that an independent mediation mechanism be established as part of this proceeding to be the point of first contact in disputes among incumbent licensees and BEA auction winners. Mediation costs will be paid by the auction winner, except in the case of a finding by the mediator that the incumbent licensee's request for arbitration was not filed in good faith and was frivolous. In its role as a frequency coordinator and representative of SMR licensees as well as private system users, PCIA believes that it can be of great assistance to negotiating teams in identifying relocation spectrum and aiding discussions of retuning methodologies. Thus, PCIA offers its services in attempting to manage this enormous undertaking.⁵

⁵PCIA looks forward to the opportunity to discuss this concept with the Commission further in the near future.

C. General SMR Rules and Policies

PCIA believes that anti-warehousing and strict construction requirements should apply to BEA auction winners. In this regard, PCIA is concerned with the Commission's proposal to permit a BEA auction winner to construct a channel in a remote portion of a BEA and have the channel considered "constructed". This would permit a BEA licensee to isolate an incumbent licensee; never having to offer relocation to the incumbent and preventing the incumbent from being able to network with other independent licensees.

At the same time, PCIA is sensitive that in a re-use cellular-type construction pattern, a single frequency is not utilized in every part of the service area. However, PCIA believes that some minimum construction should be required for every channel in the BEA authorization. Since the typical re-use pattern is a seven cell system, PCIA recommends that the Commission adopt a requirement that a single channel in a BEA authorization be constructed to cover at least 1/7 of 2/3 of the BEA population, or alternatively 10% of the population. In this manner, warehousing of spectrum can be minimized, and incumbent licensees are presented with the greatest opportunity to have their needs addressed.

Consistent with the Commission's proposal, PCIA believes that the General Pool channels and the remaining 80 channels in the SMR Pool should initially be available for retuned incumbents with no auctions.⁶ However, as discussed above, licensees in the General

⁶In a written ex parte document, PCIA documented to the Commission the extensive use of GC and Business Radio Pool channels by private licensees. PCIA submits that those findings should

Category, Business and Industrial/Land Transportation Pools should also be able to obtain geographic licenses by "clearing off" channels on a channel-by-channel basis in the respective Pools. PCIA believes that the Public Safety, Industrial/Land Transportation and Business Frequency Pools should continue to be licensed under existing policies. Fully loaded, transmitter site based incumbent SMR licensees should continue to be permitted to access Industrial/Land Transportation, Business and General Access Pools through inter-category sharing.

The Commission has proposed to require existing Wide-Area Licensees to re-justify their requests, and complete construction of the system within two years or the remaining license term, whichever is shorter. PCIA does not oppose the re-justification for legitimate wide-area waiver recipients and extended implementation licensees of the time period needed for construction only. The Commission must not require a total re-justification of the waiver (i.e. channel re-use, channel separation, loading showing, etc.). The Commission must recognize that numerous companies are in the middle of business planning, construction and the raising of million of dollars for their systems based upon the Commission's grant of waivers and licenses. To require these licensees to completely re-justify their waiver requests is unfair, and may actually result in less competition in the marketplace.

discourage the Commission from even considering allocations of that spectrum exclusively for SMR use.

In addition, the Commission should recognize that the construction period for systems moving to more advanced technology is different than for applicants which do not have systems in operation. Existing systems converting to more advanced technology require more time to accomplish the conversion than to implement a new system. The conversion of customers must be accomplished on a gradual basis. Therefore, the Commission should be willing to provide the complete five year term for conversion of existing systems.

For new systems, the Commission should review carefully representations regarding availability of funds, technical parameters and whether the system truly will be an interacting system before agreeing to provide the additional time for construction.

D. Incumbent SMRS Retuning Bill Of Rights

PCIA's SMRA Council has worked diligently with many SMR organizations over the last several months to develop an "Incumbent SMR Bill Of Rights" to protect incumbent operators. PCIA believes that it is vital that the Commission recognize each and every aspect of the rights and incorporate them into any Report and Order and rules developed in this proceeding.

The basic premise of the transition rules is that an incumbent SMR licensee is entitled to a system "comparable" to its existing system with all costs paid by the auction winner.

- The auction winner would guarantee payment of all costs of retuning the incumbent, including all engineering and equipment fees, as well as any additional reasonable

costs. Such expenses might include: FCC filing fees; preparation of a new application, etc.

- A comparable system would be one that is as good as or superior to the existing system. A comparable SMR system likely would have the following characteristics:
 - > The new system would have the same number of channels as the incumbent currently holds.
 - > The retuned frequencies would be selected so that they are compatible in a multi-channel system at the incumbent's operating location.
 - > The new frequencies would have no co-channel licensees within the BEA (unless negotiated otherwise), and would have no co-channel transmitter based licensee within seventy (70) miles if the distance spans more than one BEA.
 - > The incumbent's base station equipment would have to be modified to operate on the new frequencies, and all user units would have to be reprogrammed/recrystallized for the new frequencies, including user control stations. However, in some cases the incumbent end user equipment may not be modifiable and new equipment will be necessary.
 - > The new frequencies/equipment must provide the same (if not better) performance as the existing frequencies/equipment, including antenna height and power as well as interference protection.
 - > The incumbent is entitled to the same channel separation for the new frequencies as the current authorization. In other words, if the licensee currently has 1 MHz spacing between the assigned channels, the incumbent is entitled to receive the same channel spacing on the new channels (unless the incumbent agrees otherwise). Similarly, an incumbent utilizing contiguous channels is entitled to receive new contiguous channels as part of any move.
- The wide area licensee would complete all activities necessary for placing the new system into operation and provide the incumbent with a seamless transition to the new system. This may require the construction of a complete, redundant backbone system, with customers

gradually moved from one system to the other.⁷ However, costs for the redundant backbone, as well as designation of an incumbent employee to manage the transition (at their normal hourly rate), including duplicative costs for tower rent, must be borne by the auction winner. Payment of costs to incumbent licensees should be made "up front" to the maximum extent possible. The incumbent licensee should not be required to put forth money for the transition. Similar to construction contracts, payment schedules should be created to provide the incumbent licensee with actual recovery of costs immediately.

- "Safety net" provision guarantees that no incumbent SMR licensee, under any circumstances, will be required to cease its operations unless suitable alternative facilities are identified and agreed to.
- BEA licensees should be required to notify any incumbent licensees that the BEA licensee intends to move the incumbents within one year of grant of the BEA license.

1. **The Transition Plan And Cost Commitment Must Include:**

- a. The engineering plan for modification to the system or relocation to other spectrum or facilities;
- b. A review of options available or considered, along with reasons for the approach selected;
- c. Cost estimates that include all direct and indirect costs to the incumbent SMR licensee from implementing the requested accommodation;
- d. Details concerning zoning, site availability, environmental and any other approvals required to effectuate the accommodation; and
- e. The projected time frame in which the accommodation can be implemented, consisting of all operational, regulatory and approval requirements.
- f. Incumbent licensees should be free to negotiate mutually acceptable agreements for spectrum accommodation or relocation

⁷The redundant backbone may need to include repeaters, interconnect equipment, combiners, antennas, additional telephone lines, site rental costs, equipment maintenance, etc. All costs for the redundant backbone must be borne by the BEA licensee.

- g. **Full Cost Compensation.** In the event that voluntary negotiations prove fruitless at the expiration of a fixed period of one year, a BEA licensee may request involuntary relocation of the incumbent, subject to the condition that the BEA licensee assume the relocation costs.

2. **Suggested Options For Relocation**

PCIA recommends three options for the manner in which relocation can be accomplished. The three options listed below are not exclusive of other ideas which may be agreed to by the BEA licensee and the incumbent licensee, but represent critical factors that must be present in any relocation agreement.

a. **Option #1**

Construction of "turn key" facilities. Unless agreed to otherwise, the BEA licensee will itself complete the construction and related activities necessary for bringing the retuned facilities into service. After testing and acceptance by the incumbent, the new installation would be handed over to the incumbent licensee in exchange for the relinquishment of its old system and frequency. The incumbent licensee should have the right to supervise all construction.

b. **Option #2**

Reimbursement of reasonable expenses incurred. The parties agree that the incumbent licensee will assume the responsibility for relocating its facilities, with the BEA licensee undertaking to reimburse the licensee for all reasonable and necessary expenses it incurs (see payment options discussed above), including incumbent employee time expended on the actual relocation of facilities and customers.

c. **Option #3**

Up front cost cash compensation. The parties agree up front upon the costs associated with relocating the incumbent licensee to a new spectrum home or to alternative facilities and the BEA licensee provides that licensee with monetary compensation for those costs. The incumbent licensee would then effectuate the relocation itself. Legitimate unanticipated cost overruns should also be paid to the incumbent licensee.

3. The Transition Process Should Be Required to Follow Established And Predictable Procedures That Will Facilitate Settlements

In order to initiate the relocation process, the BEA licensee first transmits a "Notice of Request for Accommodation" to affected incumbent SMR licensees. The purpose of the notice and the required response of the incumbent SMR licensee would be to exchange information necessary to begin negotiation of the issues attendant to the relocation. The notice and/or response should include the following information:

- a. In the notice, the BEA licensee must specify the frequencies and their locations for which accommodation is sought.
- b. The notice would state that the incumbent SMR licensee is entitled to either: 1) request that the BEA licensee itself prepare a transition plan and compensation commitment; or 2) prepare its own transition plan and cost estimates for transmittal to the BEA licensee.
- c. In its response, the incumbent SMR licensee would be obligated to advise the BEA licensee of its choice regarding allocation of the responsibilities for preparation of the transition plan and relocation of the facilities.
- d. The response should also include all information and specifications necessary to determine the technical performance of the incumbent SMR licensee's existing facilities so that the benchmark against which the new system must be designed can be established.

Once the relevant information has been exchanged, the parties would proceed to negotiate the allocation of relocation responsibilities and resolve any differences or disputes concerning the details of the plan and the costs involved. Implementation of

the plan would begin as soon as an agreement is reached on these details. To facilitate this negotiation process the FCC should:

- e. Make clear that the required "cost compensation" includes the replacement cost of existing facilities, including all expenses necessary to bring the new system into operation, where the new facilities are deemed to be comparable alternatives; and;
- f. Declare that there is a rebuttable presumption of comparable facilities where the auction winner: (1) proposes the installation of facilities whose specifications meet or exceed those of the incumbent licensee's existing facilities; and (2) demonstrates through reliable engineering documentation that comparable performance can be expected from the new system under anticipated field conditions.

4. **The Procedures For Addressing Transition Plan Controversies Must Be Carefully Circumscribed To Promote Expeditious Settlements**

The process of resolving relocation disputes must satisfy two fundamental criteria. First, the process must minimize the imposition of limited agency resources. Second, it must contain strong incentives for prompt settlement. The following procedures should reasonably accommodate these concerns:

- a. **Neutral mediation.** Parties unable to reach a mutual understanding concerning the transition plan and related issues would be required to seek outside mediation. The transition plan, the estimated costs of relocation, and the particular area of dispute would be submitted to evaluation by a mutually acceptable, neutral expert. This independent review would be a pre-condition to seeking FCC intervention.⁸
- b. **FCC intervention as a last resort.** The Commission would serve only as the forum of last resort for resolving disputes about the relocation plans or parties' compliance with the transition procedures.

⁸As discussed previously, PCIA believes that its resources can be a significant aid in this process.

- c. **Losser pays costs.** The losing party before the FCC would be required to pay the full costs of the dispute resolution process, including those incurred by the "winning party" and by the agency. This requirement would penalize dilatory tactics while at the same time offering incumbents protection against pressure to accept a demonstrably incomplete or inferior relocation proposal.

This tiered process can be expected to encourage the parties either to agree initially or, as a minimum, to accept the expert's impartial evaluation and to discourage further appeals to the agency. As such, its adoption by the Commission should serve to accelerate the introduction of newer technologies for the public.

E. Designated Entity Blocks

It is the Bureau's view that no Designated Entity ("DE") Block should be adopted in the upper 200 channels. While PCIA does not suggest that a particular block of spectrum should be held out for DE's, the Commission should encourage bidding by the many small businesses which are incumbents on these channels. Quite simply, these incumbents, operating on these SMR channels for decades in some cases, have made significant financial investments in the construction and operation of their systems. The Commission should do everything in its power to ensure that these incumbents have opportunities to bid for the spectrum on which they operate. In particular, a bidding credit would be most useful for the 20 channel block. In fact, without bidding credits it is almost unnecessary to have a 20 channel block available. Therefore, PCIA urges the Commission to make bidding credits available for small businesses bidding on any of the SMR Pool channels.

PCIA is aware of the Commission's concern that such credits would encourage application mills to attempt to set up consortia to bid, without a real intention to build. Therefore, PCIA suggests that the Commission limit such bidding credits to small businesses who are incumbent licensees on the frequencies being bid.⁹ In this manner, the Commission may ensure that bidding credits are used by those entities which have invested in operating in this band, entities which are the most harmed by the Commission's proposal.

F. Border Area Channels

PCIA is concerned that the Commission has not yet adequately addressed the issue of Mexican and Canadian border area channels. As the Commission is aware, there are far fewer frequencies available in these areas, compared to the rest of the United States. In such areas, legitimate SMR operators have been forced to rely on inter-category sharing to relieve congestion on crowded systems. Therefore, PCIA requests that the Commission continue to make inter-category sharing available in border regions for fully-loaded SMR systems.

⁹The Commission has the authority to limiting eligibility to incumbent licensees. Further Notice of Proposed Rule Making and Notice of Inquiry, MM Docket No. 87-268, FCC 95-315, released August 9, 1995.

III. CONCLUSION

For the foregoing reasons, PCIA urges the Commission to modify its proposed rules for 800 MHz licensing consistent with the views expressed herein.

Respectfully submitted,

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